

CONTRACT
FOR
ENGINEERING SERVICES

THIS AGREEMENT, made and entered into this 12th day of November, 1996, by and between Hendricks County, Indiana, acting by and through its Board of County Commissioners, (herein called the "COUNTY") and BEAM, LONGEST & NEFF, INC., Consulting Engineers, 8126 Castleton Road, Indianapolis, Indiana 46250, (herein called the "CONSULTANT").

WITNESSETH:

WHEREAS, the COUNTY is proposing to create computerized soils and land use mapping specifically tailored to the COUNTY, and,

WHEREAS, the COUNTY desires to obtain the professional services required in the preparation of said mapping, and,

WHEREAS, the CONSULTANT is qualified and prepared to perform the services required in the preparation of said mapping, and they agree to perform such work under the terms and conditions herein set forth, and,

IT IS, THEREFORE, MUTUALLY AGREED that the COUNTY does hereby employ the CONSULTANT to perform the professional services specified herein and agrees to pay for such services the amounts hereinafter specified; and the CONSULTANT agrees to perform such services as are herein enumerated.

SECTION I. SERVICES BY THE CONSULTANT

1. SOILS MAPPING

The CONSULTANT will provide the following services related to the conversion of soils mapping into a digital format:

- 1.1 From soils maps obtained from the Soil Conservation Service, the CONSULTANT will digitally reproduce and create a seamless soils map covering Hendricks County. The digital soils map is to be geo-corrected so as to approximately overlay the COUNTY'S existing digital base map.
- 1.2 Each area of soil type is to be created as a separate polygon and tagged with the correct soil type.
- 1.3 The digital soils map will be in a format compatible with Hendricks County's GIS (Genasys).

2. LAND USE MAPPING

2.1 For agricultural parcels legally described as agricultural parcels, the CONSULTANT will convert land use mapping into a digital format. The land use can be determined and provided by the COUNTY on marked copies of aerial photography or determined at the discretion of the CONSULTANT, if requested by the COUNTY.

2.2 The CONSULTANT will tag each land use polygon with the designated type of classification. The classification will be limited to the following land types:

- 4 Tillable
- 5 Non-Tillable
- 6 Woodland
- 72 Farm Pond and Water

2.3 The CONSULTANT will delineate land type 72. The information will be obtained from the Soil Conservation Service soils maps.

2.4 If requested, and if Federal Emergency Management Agency (FEMA) maps are provided by the COUNTY, the CONSULTANT will delineate flood plain areas from the FEMA maps. This information will be used to define the following land types as applicable:

- 41 Occasional Flooding
- 42 Severe Flooding

2.5 If represented graphically by the COUNTY on copies of aerial photography, the following land types will be delineated by the CONSULTANT:

- 21 Classified Forest
- 22 Wildlife Habitat
- 23 Riparian Land
- 24 Windbreak
- 25 Filterstrip
- 43 Farmed Wetlands
- 71 Farm Buildings and Barn Lots
- 73 Wetlands
- 81 Legal Ditch
- 82 Public Roads

- 2.6 The digital land use mapping is to be geo-corrected so as to approximately overlay the COUNTY'S existing base map.
- 2.7 The digital land use mapping will be delivered in a format compatible with the COUNTY's GIS (Genasys).

3. ASSESSMENT REPORT

- 3.1 Provide to the COUNTY an initial assessment report for the agricultural parcels in Hendricks County.
 - 3.1.1 The assessment report will be a digital listing by section of the measured acreage of each unique land type and soil ID combination contained in each agricultural parcel.
 - 3.1.2 This assessment report will reflect a ratio adjustment of the computer measured acreage to the legal acreage so the land total will equal the parcel legal acreage as depicted in the COUNTY'S database.

4. COMPUTER TRAINING

- 4.1 The CONSULTANT will provide, as a minimum, thirty-two (32) hours of training in the use of the customized recommended GIS software for overlay calculations.

5. USER INTERFACE

- 5.1 The CONSULTANT will customize the COUNTY'S GIS (Genasys) in order to enable the COUNTY to produce overlay calculations with the soils, land use and parcel data. The output of the calculations will be in an arrangement determined by the COUNTY. The report will contain the calculated parcel acreage, the ratio adjusted soil/land use polygon acreage calculations, and the parcel identification number. The digital output of the calculations will be in DXF or ASCII format (see Exhibit "A" for Software License and Exhibit "B" for Software Maintenance Agreement).

6. COMPUTER SUPPORT

7.1 Provide ongoing support, from time to time, for updating data when requested by the COUNTY.

7.2 Provide additional operational support when requested by the COUNTY.

SECTION II. OBLIGATION OF COUNTY

1. GENERAL

1.1 Provide the CONSULTANT any information required to conduct and complete the project.

1.2 Provide necessary databases, in required format, from the COUNTY'S existing database system.

2. PAYMENT

2.1 To pay the CONSULTANT as compensation for professional services under Section I, on the basis of salary cost, plus overhead (98.5%), plus profit (15%), and expenses, with a not-to-exceed limit of Forty-nine Thousand Nine Hundred Dollars (\$49,900.00) unless otherwise specified in writing by the COUNTY.

2.2 To pay the CONSULTANT a license fee for the user interface as described in Section I, item 5, in the amount of One Hundred Dollars (\$100.00).

IT IS FURTHER MUTUALLY AGREED BY THE COUNTY AND THE CONSULTANT:

- A. That if any work covered by this contract or specified by the CONSULTANT shall be suspended or abandoned, the COUNTY shall pay the CONSULTANT for the services rendered on account of it; the payment to be based as far as possible on the fee established by this contract; or where the contract cannot be applied, then the basis shall be salary cost plus overhead (98.5%) plus profit (15%) and expenses.
- B. That no assignment of this contract nor of any interest therein shall be binding upon either party hereto without the written consent of the other party.
- C. Any claim or suit by Licensee against Licensor may, at the option of Licensor upon written notice to the Licensee, be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be conducted and

the award made in Indianapolis, Indiana. The parties hereby agree that the state or federal courts of Indiana which include Marion County, Indiana, within their geographical jurisdiction shall (subject to the provisions for arbitration above) have exclusive jurisdiction and venue over any action or suit between the parties (including any action to compel arbitration or to enforce any arbitration award) in connection with this Agreement or the Licensed Product. Licensors may, however, institute suit against Licensee in any other court within or outside Indiana having jurisdiction over the Licensee to enforce any rights or remedies under this Agreement. This Agreement shall be governed by the laws of the State of Indiana, without regard to conflict of laws principles.

- D. This Agreement, the Software License (Exhibit "A") and the Software Maintenance (Exhibit "B") (which are incorporated herein by reference), constitute the sole agreements between the parties relating to the subject matter hereof and supersede all prior understandings, writings, proposals, representations or communications, oral or written, of either party. Licensee acknowledges that Licensors has made no warranties or representations inconsistent with the terms of this Agreement. This Agreement may be amended only by a writing executed by the authorized representatives of both parties. A party shall not be deemed to waive any rights or remedies under this Agreement unless such waiver is in writing signed by such party.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement, the day and year first above mentioned.

CONSULTANT:
BEAM, LONGEST & NEFF, INC.

BY: 

Eric Reske
Executive Vice President

BOARD OF COUNTY COMMISSIONERS
HENDRICKS COUNTY, INDIANA


John D. Clappitt, President

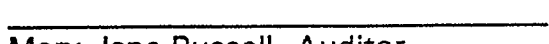

Hursel C. Disney, Member


Richard P. Myers, Member

ATTEST:


Stephen G. Luther
Director of Corporate Services

ATTEST:


Mary Jane Russell, Auditor
Hendricks County, Indiana

SOFTWARE LICENSE

1. Definitions. As used in this Agreement, the following definitions shall apply:

(a) "Licensed Product" shall mean collectively the Licensed Software and Licensed Documentation (as defined below);

(b) "Licensed Software" or "Software" shall mean (1) Licensor's Soils and Land Use Calculations by BLN V1.1 software in machine readable form, together with such additional Software as the parties may from time to time agree in writing shall be licensed under this Agreement, and all permitted copies of any such Software, and (ii) all changes, updates, and enhancements of any Software licensed by Licensor under this Agreement, but excluding any new versions of such Software which incorporate major modifications of or improvements in such Software (the license of which new versions shall be subject to separate license agreements between the parties);

(c) "Licensed Documentation" shall mean all documentation and related materials in machine readable, printed, or other form delivered by Licensor to Licensee in connection with the Licensed Software; and

(d) "Site" shall mean the Licensee facility located at the Hendricks County Offices, 355 South Washington, Danville, Indiana 46122.

2. License. Subject to the payment of the license fee under Paragraph 3, Licensor hereby grants to Licensee, and Licensee hereby accepts, a perpetual, non-exclusive and non-transferable license to use the Licensed Software solely and exclusively for the internal use of the Licensee at the Site and at no other location.

3. License Fees, Taxes, and Shipping

(a) The license fee for the license granted hereunder shall be the amount described under Section II, Item 2.2, which is payable in full upon execution of this Agreement.

(b) Licensee shall pay all taxes based on or in any way related to this Agreement, the Licensed Product or any services related thereto, including without limitation sales, use, and personal property taxes.

(c) Licensor shall arrange for shipment of the Licensed Product to Licensee, F.O.B. Licensor's principal office, and Licensee shall pay all costs of shipping and shall assume all risk of loss in shipment.

4. Ownership of Licensed Software. Licensee acknowledges and agrees that the Licensed Product is the exclusive property of and constitutes a valuable trade secret of Licensor, and that any unauthorized disclosure or use thereof will cause irreparable harm and loss to Licensor. Licensee may disclose the Licensed Product only to such of its employees as may be required to operate the Licensed Product. Licensee shall not disclose or make available the Licensed Product, or any portion thereof, in any way to any other person or entity, including without limitation any parent or subsidiary of Licensee, or any other person or entity directly or indirectly affiliated with Licensee. Upon any termination of this Agreement, Licensee shall immediately return the Licensed Product and all copies thereof to Licensor.

5. Restrictions on Reproduction or Modification of Licensed Product

(a) Licensee may reproduce the Licensed Product solely for use at the Site within the scope of the license granted in Paragraph 2 above. All copies of the Licensed Product, or any portion thereof, shall contain Licensor's restrictive, proprietary, trademark, and copyright notices in form and substance as they appear on or in the Licensed Product delivered by Licensor.

(b) Licensee may not disassemble, reverse engineer, or translate the Licensed Software in any way. Licensee may not modify the Licensed Product in any way, or merge the Licensed Software into any other software product of any kind.

(c) Licensee agrees to take all measures required to prevent its employees and others at the Site from engaging in the activities prohibited under this Paragraph and Paragraph 4.

6. Limited Warranty. Licensor warrants that the Licensed Software will be free from defects for a period of ninety (90) days ("Warranty Period") from delivery of the Licensed Product to Licensee, subject to use by Licensee in accordance with the Licensed Documentation delivered by Licensor. Such warranty shall not apply in the event of misuse or damage to the Licensed Product by Licensee. In the event of any such defect which is reported to Licensor within the Warranty Period, Licensor may at its option (a) use its best efforts to correct the defect, (b) replace the defective copy of the Licensed Software, or (c) refund to Licensee the license fee under this Agreement upon delivery to Licensor of the Licensed Product and all copies thereof. EXCEPT AS SPECIFICALLY PROVIDED ABOVE IN THIS PARAGRAPH 6, LICENSOR IS LICENSING THE LICENSED PRODUCT UNDER THIS AGREEMENT "AS IS," AND THERE ARE NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE LICENSED PRODUCT. Licensee acknowledges that it is solely responsible for (and that Licensor shall have no liability for) the selection, installation, use, efficiency, and suitability of the Licensed Product and for the evaluation of the Licensed Product. Licensee assumes all risk from the use or inability to use the Licensed Product. Licensor does not warrant that the Licensed Product will satisfy the requirements of the Licensee or that the operation of the Licensed Product will be error-free or uninterrupted.

7. Limitation of Liability

(a) IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES RESULTING FROM OR RELATED TO ANY DEFECT IN OR PERFORMANCE OF THE SOFTWARE PRODUCT OR RELATING IN ANY OTHER WAY TO THE LICENSED PRODUCT, INCLUDING BUT NOT LIMITED TO DAMAGES FROM LOSS OF DATA, OR FROM OR RELATED TO DELAY OF THE LICENSOR IN DELIVERING THE LICENSED PRODUCT. LICENSOR SHALL HAVE NO LIABILITY TO LICENSEE FOR THE INFRINGEMENT OF PROPRIETARY RIGHTS BY THE LICENSED PRODUCT OR ANY PORTION THEREOF.

(b) IN NO EVENT SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE LICENSED PRODUCTS, OR TO THE PERFORMANCE OR BREACH OF THIS AGREEMENT BY LICENSOR, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S AGGREGATE LIABILITY TO LICENSEE UNDER THIS AGREEMENT, IF ANY, SHALL IN NO EVENT EXCEED THE TOTAL OF THE LICENSE FEES PAID TO LICENSOR BY LICENSEE.

8. Termination. The Licensor may terminate this Agreement and any license granted hereunder in the event of any violation of this Agreement by the Licensee, in the event of an Excess Use as described in Paragraph 2, or if Licensee becomes insolvent or seeks or obtains protection under any bankruptcy law. In the event of such termination, Licensee shall cease any further use of the Licensed Product or any further use of the Licensed Product or any portion thereof and shall immediately return the Licensed Product and all copies thereof to the Licensor. In addition, in the event of a violation of this Agreement by Licensee, Licensor may resort to all rights and remedies available at law and in equity, and shall be entitled to recover its attorneys' fees and other costs incurred in enforcing any such rights and remedies.

SOFTWARE MAINTENANCE AGREEMENT

The parties have entered into a Software License (Exhibit "A") relating to the Licensed Product described below. The parties wish to enter into this Software Maintenance (Exhibit "B") under which Licensor will perform certain continuing maintenance functions in connection with the Licensed Product.

1. Definitions.

(a) "Licensed Product" shall mean (i) the Soils and Land Use Calculations by BLN V1.1 software in machine-readable form and any and all other Licensed Software as defined and referred to in the Software License (Exhibit "A"), (ii) all changes, updates, revisions, and enhancements of such programs delivered by Licensor to Licensee under this Exhibit "B", and (iii) all documentation and related materials in machine-readable, printed, or other form delivered by Licensor to the Licensee in connection with the Licensed Software.

2. Software Maintenance Services

(a) Subject to the following terms and conditions, Licensor hereby agrees to provide to the Licensee the following maintenance services relating to the Licensed Product:

- (i) Licensor shall provide to Licensee all changes, revisions, enhancements, and updates of the Licensed Product which correct errors discovered by Licensor or its licensees which Licensor makes generally available to other licensees of the Licensed Product, together with one (1) set of associated documentation.
- (ii) Licensor shall exercise its best efforts to replace any defective copy of any Licensed Product and to correct any reproducible program error in any Licensed Product brought to its attention by the Licensee. Licensor shall have no obligation to correct errors caused by equipment failure or by errors in systems software or application software provided by third-parties or by use of the Licensed Product on equipment or in any ways other than specified by Licensor.

- (iii) Licensor shall respond, during its normal business hours, to telephone inquiries from the Licensee concerning the use, installation, and operation of the Licensed Product by the Licensee. The Licensee recognizes that some technical problems cannot be resolved by telephone during normal business hours, and may require on site visits by Licensor's personnel or off-hours consultations. If such visits or consultations are required, the Licensee shall compensate the Licensor at its then current rates for time and expenses.
- (iv) Licensor shall have no obligation to maintain the Licensed Product and shall have no other obligation under this Agreement if Licensee or any third-party (a) fails to install all corrections and updates issued by Licensor, or (b) modifies any Licensed Product, or (c) if the Licensee fails to pay fees when due hereunder.

(b) All updates delivered to the Licensee under this Exhibit "B" shall be deemed to be part of the Licensed Product as defined in the Software License (Exhibit "A") between the parties, and shall be subject to the terms and conditions of the Software License (Exhibit "A").

(c) Licensor shall make available for license to Licensee from time to time, on terms and for payment of fees prescribed by Licensor, any new versions of the Licensed Product which incorporate major modifications of or improvements in the Licensed Product, to the extent available for license.

3. Fees, Expenses, Annual Adjustments.

(a) For the services performed by Licensor hereunder, the Licensee shall pay to the Licensor an hourly fee specified under Section II, Item 2.1 of the Agreement.

(b) The Licensee shall, at its expense, provide program storage media (magnetic tapes, disks, etc.) for the updates, and shall pay for shipping. If Licensor advances funds with respect to such items, it shall promptly invoice the Licensee for such items and the Licensee shall promptly reimburse Licensor.

(c) Not less than sixty (60) days prior to the expiration of the term set forth in paragraph 4, Exhibit "B" or any subsequent annual period, Licensor may notify the Licensee that its annual fee for maintenance shall be changed for the following year. In such event, the Licensee may terminate this Agreement by delivery of a written notice of termination to Licensor at any time prior to thirty (30) days before the effective date of such change. Licensor shall invoice Licensee for maintenance for each subsequent annual period, and Licensee shall pay such invoice in full within thirty (30) days after invoice date.

4. Term. The term of this Exhibit "B" shall commence as of the later of (a) ninety (90) days following delivery of the Licensed Product to Licensee, or (b) the execution of this Agreement and, unless earlier terminated pursuant to its terms, shall remain in effect for the Licensed Product one (1) year after commencement, and thereafter from year to year until and unless either party given written notice of termination at least sixty (60) days prior to the end of the initial term or of any annual period. Notwithstanding the above, Licensor may terminate this Exhibit "B" on sixty (60) days' notice in the event that it shall cease providing maintenance service generally to users of the Licensed Product.

5. Responsibility of Licensee. The Licensee shall be exclusively responsible for supervision, and management and control of its use of the updates and of the Licensed Product, as so changed, revised or enhanced.

6. Limited Warranty.

(a) Licensor warrants that it shall exercise its best efforts to provide the services specified herein, but does not warrant that such services shall result in uninterrupted or error-free performance of the Licensed Product. Licensor shall not in any event be liable for delay or failure to perform its obligations hereunder to the extent that such delay or failure arises, directly or indirectly, from any cause beyond Licensor's control. LICENSOR SHALL IN ADDITION HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, ARISING OUT OF OR RELATED TO THIS EXHIBIT "B" OR THE LICENSED PRODUCT OR TO THE PERFORMANCE OR BREACH OF THIS EXHIBIT "B" BY LICENSOR, OR FROM ANY DELAY IN PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S AGGREGATE LIABILITY FOR ANY CLAIMS ARISING OUT OF THIS EXHIBIT "B" SHALL BE LIMITED TO THE AMOUNT OF THE INITIAL ANNUAL MAINTENANCE FEE SPECIFIED UNDER SECTION II, ITEM C OF THE AGREEMENT.

(b) THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

SUPPLEMENTAL AGREEMENT NO. 1

This agreement, made and entered into this 23 day of November, 1998 by and between Hendricks County, Indiana, acting by and through its Board of County Commissioners (herein called the "COUNTY") and BEAM, LONGEST, & NEFF, INC, Consulting Engineers, 8126 Castleton Road, Indianapolis, Indiana (herein called the "CONSULTANT").

WITNESSETH:

WHEREAS, the CONSULTANT and the COUNTY did enter into an Agreement dated November 12, 1996, to provide professional engineering services for soils and land use mapping, and,

WHEREAS, the CONSULTANT is qualified and prepared to perform the services required in said work and they agree to perform such services under the terms and conditions herein set forth, and,

WHEREAS, the project was delayed due to coordination problems with other COUNTY vendors, and,

WHEREAS, additional functionality is required to the User Interface, and,

WHEREAS, in order to complete the professional engineering services, it is necessary to amend and supplement the original Agreement, and,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Add to Section I, the following paragraph;

5.2 The User Interface will contain limited customized map output functionality.

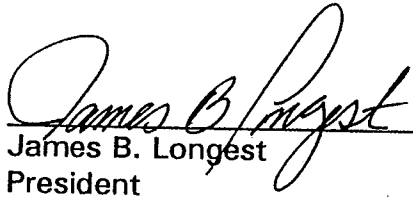
2. Amend Section II, paragraph 2.1 as follows;

2.1 To pay the CONSULTANT as compensation for professional services under Section I, On the basis of salary cost, plus overhead (98.5% of salary cost), plus profit (15% of salary cost plus overhead), and expenses, with a not-to-exceed limit of Sixty-Four Thousand Nine Hundred Dollars (\$64,900) unless otherwise specified in writing by the COUNTY.

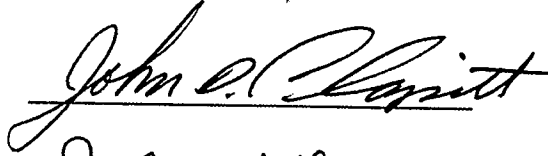
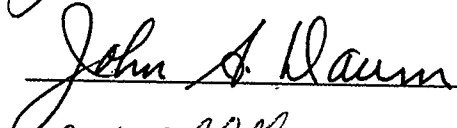

3. Except as herein modified, changed, and supplemented, all terms of the original Agreement, dated November 12, 1998, shall continue in full force and effect.

IN TESTIMONY WHEREOF, the parties hereto have executed this Agreement, the day and year first above mentioned.

CONSULTANT:
BEAM, LONGEST & NEFF, INC.


James B. Longest
President

COUNTY:
BOARD OF COMMISSIONERS
HENDRICKS COUNTY, INDIANA

ATTEST:



ATTEST:

